IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 18TH JULY 2007 / 27TH ASHADHA 1929

Bail Appl..No. 4348 of 2007()

CRIME NO.531/04 OF THALIPARAMBA POLICE STATION
CC.44/2005 of J.M.F.C.,TALIPARAMBA

.....

PETITIONER/2ND ACCUSED

LATIF, S/O SOOPI,
THALIPARAMBA AMSOM, DESOM,
KANNUR.

BY ADV. SRI.SUNIL NAIR PALAKKAT
SRI.K.N.ABHILASH

RESPONDENTS: COMPLAINANT/STATE

STATE OF KERALA REPRESENTED BY
SUB INSPECTOR OF POLICE,
THALIPARAMBA POLICE STATION,
(THROUGH PUBLIC PROSECUTOR OF THE HIGH COURT OF KERALA).

BY PUBLIC PROSECUTOR SRI. P. RAVEENDRA BABU

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 18/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 4348 of 2007

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Dated this the 18th day of July, 2007

O R D E R

Petitioner is the second accused in a prosecution for offences punishable, inter alia, under Sections 452 and 324 I.P.C. Reckoning him as absconding, the court, after taking cognizance, has issued warrant of arrest against the petitioner. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. His absence was not wilful, but was due to reasons beyond his control. No process was served on the petitioner. The petitioner was actually appearing before the same court in C.C.No.59 of 2005 regularly. In these circumstances the issue of warrant against the petitioner is really not justified. It is prayed that directions under Section 438 Cr.P.C. may be issued in favour of the petitioner.

2. It is trite after the decision in **Bharat Chaudhary** v. **State of Bihar** (IR 2003 SC 4662) that powers under Section 438 Cr.P.C. can be invoked even in favour of a petitioner, who apprehends arrest in the pending case on the strength of a non-bailable warrant issued by the court. Even that is not by itself sufficient to justify the

invocation of the jurisdiction under Section 438 Cr.P.C. I am unable to find any compelling reasons which would justify invocation of the jurisdiction under Section 438 Cr.P.C.

3. It is certainly for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner when he surrenders before the learned Magistrate, on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued by this Court in the decision in **Alice George** v. **Dy.S.P. of Police** (2003 (1) KLT 339).

4. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously - on the date of surrender itself. However, I direct that the warrant of arrest issued against the

petitioner shall not be executed till 28.7.2007. The petitioner shall in the meantime appear before the learned Magistrate and seek bail.

(R. BASANT)
Judge

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